

"Demand charges" are generally part of the purchaser's "purchase price" for electricity or electric service that is used for calculating the purchaser's Electricity Excise Tax liability on purchases from municipal systems. See 35 ILCS 640/2-4(b). (This is a GIL.)

November 29, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated September 7, 1999, and our telephone conversation of November 24, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am an engineering consultant for the CITY, Illinois Electric Department.

The City has traditionally charged its customers on an energy-only (kwh) rate. As such, it has remitted its taxes based on the normal formula of a certain rate per kwh or 5 percent, whichever is less.

The City has recently changed its rates from energy only to a demand and energy rate for its larger customers. Our question is: Do we ignore the demand charge for tax purposes and pay the taxes based solely on the kwh/5% formula or; do we incorporate the demand charge in some way.

As set out below, "demand charges" are generally part of the purchaser's "purchase price" for electricity or electric service that is used for calculating the purchaser's Electricity Excise Tax liability on purchases from municipal systems.

The Electricity Excise Tax Law became effective on August 1, 1998. The appropriate tax base applicable under the provisions of the Electricity Excise Tax Law will depend upon the type of supplier of the electricity or electric service. Electricity Excise Tax is imposed on the privilege of using electricity in this State that is purchased from a municipal system or electric cooperative, as defined in Article XVII of the Public Utilities Act, which has not made an election as permitted by either Section 17-200 or Section 17-300 of such Act, at the lesser of 0.32 cents per kilowatt hour of all electricity distributed, supplied, furnished, sold, transmitted, and delivered by such municipal system or electric cooperative to the purchaser or 5% of each such purchaser's purchase price for all electricity distributed, supplied, furnished, sold, transmitted, and delivered by such municipal system or electric cooperative to the purchaser,

whichever is the lower rate as applied to each purchaser in each billing period. 35 ILCS 640/2-4(b) (1998 State Bar Edition).

Section 2-3 of the Electricity Excise Tax Law, 35 ILCS 640/2-3(d) (1998 State Bar Edition), defines the term "purchase price" as

"(d) "Purchase price" means the consideration paid for the distribution, supply, furnishing, sale, transmission or delivery of electricity to a person for non-residential use or consumption (and for both residential and non-residential use or consumption in the case of electricity purchased from a municipal system or electric cooperative described in subsection (b) of Section 2-4) and not for resale, and for all services directly related to the production, transmission or distribution of electricity distributed, supplied, furnished, sold, transmitted or delivered for non-residential use or consumption, and includes transition charges imposed in accordance with Article XVI of the Public Utilities Act and instrument funding charges imposed in accordance with Article XVIII of the Public Utilities Act, as well as cash, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service costs, or any other expense whatsoever. However, "purchase price" shall not include consideration paid for:

- (i) any charge for a dishonored check;
- (ii) any finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;
- (iii) any charge for reconnection of service or for replacement or relocation of facilities;
- (iv) any advance or contribution in aid of construction;
- (v) repair, inspection or servicing of equipment located on customer premises;
- (vi) leasing or rental of equipment, the leasing or rental of which is not necessary to furnishing, supplying or selling electricity;
- (vii) any purchase by a purchaser if the supplier is prohibited by federal or State constitution, treaty, convention, statute or court decision from recovering the related tax liability from such purchaser; and
- (viii) any amounts added to purchasers' bills because of charges made pursuant to the tax imposed by this Law.

In case credit is extended, the amount thereof shall be included only as and when payments are made."

To properly calculate the amount of tax incurred by a customer of a municipal system in a billing period, the amount of kilowatt-hours of electricity used must be multiplied by 0.32 cents. The result must be compared to an amount equal to 5% of the purchaser's purchase price of all the electricity distributed, supplied, furnished, sold, transmitted, and delivered by that municipal system. The lower amount is the amount of tax incurred by that customer for that billing period. For calculating the proper amount of tax, "demand charges" for electricity or electric service are generally included in determining the purchaser's "purchase price" for electricity or electric service.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.